

**BEFORE THE THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961, RSMo.**

IN RE:

By his parents

vs.

Special School District of St. Louis County, Missouri

COVER SHEET

PETITIONER

Student's Name:

DOB:

Grade Level:

Parent's Name(s):

Address:

Representative: Assisted by Julie Roscoe of Judevine Center for Autism

Address: see above

RESPONDENT

Local Education Agency: Special School District of St. Louis County (LEA)

Address: 12110 Clayton Road

Town & Country, MO 63131

Representative: James Thomeczek

Address: Thomeczek Law Firm

1120 Olivette Executive Parkway, Ste. 210

St. Louis, Missouri 63132

Hearing Dates: June 3, 4, 5, 26 and 27, 2003

Date for Mailing of Decision: August 8, 2003

Date of Decision: August 1, 2003

Panel Members: Ms. Janice Duncan
Mr. Rand Hodgson
Ms. Margaret M. Mooney, Chairperson

ISSUES AND PURPOSE OF HEARING

In this hearing, the parents sought a declaration that the Respondent:

- a) Failed to provide Petitioner with a F.A.P.E. because the Respondent violated Student's and Parents' procedural and substantive rights in numerous ways;
- b) Suggested placement of Petitioner which was not the least restrictive environment and did not meet his unique needs;
- c) School District changed placement when the "majority" of the IEP team did not agree;
- d) School District's lack of appropriate educational services has resulted and will continue to result in Student regressing and being unable to transition to more mainstream school setting and decrease his post-secondary likelihood of success.

TIME LINE INFORMATION

Parents' request for a due process (without legal counsel) was received by the Department of Elementary and Secondary Education on March 20, 2003 with a Decision initially due by May 5, 2003.

On April 23, 2003, the Special School District (through counsel) requested a continuance of the Hearing. Parents orally consented to this extension. The Chair issued a Notice of Hearing on that date setting the matter for Hearing on June 3, 4 and 5, 2003 with the Decision to be rendered by June 16, 2003.

On May 12, 2003 Counsel for the Special School District requested that the time line for decision be extended through June 20, 2003. Parents orally consented to this extension. The Chair issued a Notice on that date extending the time for Decision to June 20, 2003.

At the conclusion of testimony on June 5, 2003 the parties agreed on the record to two additional days for hearing on June 26 and 27, 2003 and for the time for Decision to be extended to July 28, 2003 so that post- Hearing Findings of Fact and Conclusions of Law could be filed by the parties.

On July 24, 2003 Counsel for the School District asked the Chair to extend the time for mailing the Decision through and including August 8, 2003 because its post hearing pleading directed to Panel Member Rand Hodgson had been misdirected in the mail. By telephone conversation with the Chairperson, Parents did not oppose this or any request for continuance.

The date for completing and mailing the decision was set as August 8, 2003. The Decision was mailed to both parties by Certified Mail on August 1, 2003.

A hearing was held on June 3, 4, 5, 26 and 27, 2003 and

- (a) Parents exercised their right to not be accompanied and advised by counsel, but to be assisted by Ms. Julie Roscoe, an Assistant Director of Judevine Center for Autism;
- (b) Parents elected to open the Hearing to the public; and
- (c) Parents elected to exclude witnesses prior to their testimony

defined by the Missouri State Plan for Implementing Part B of the Individuals with Disabilities Education Act, who reside in school districts that lie within St. Louis County.

5. The District was represented by James Thomeczek, Thomeczek Law Firm, 1120 Olivette Parkway, Suite 210, St. Louis, Missouri 63132.

6. Parents were not represented by counsel, but were assisted at the hearing by Julie Roscoe an Assistant Director at Judevine Center for Autism.

7. The Hearing Panel for the due process proceeding was:

Margaret M. Mooney, Hearing Chairperson
Ms. Janice Duncan, Panel Member
Mr. Rand Hodgson, Panel Member

8. On or about March 20, 2003, the Parents sent a letter to DESE requesting a due processing hearing. (HP Ex 1). The request for the due process hearing was received by DESE on March 20, 2003.

9. On or about March 20, 2003 Ms. Pam Williams, Director for Special Education Compliance at DESE notified the Parents (HP Ex 2) that their due process request had been received and that they needed to select a hearing panel member for the requested due process hearing. Ms. Williams provided the Parents with a copy of the Procedural Safeguards for Parents and Children (HP Ex. 2, 3).

10. On or about March 27, 2003 Ms. Williams notified the Hearing Chairperson (HP Ex 4) and the Hearing Panel Members (HP Ex. 4) that they had been selected to serve on the Hearing Panel for this Due Process.

11. On April 23, 2003 the Hearing Chairperson notified the parties the due process hearing was required to be held and a written decision rendered by May 5, 2003. (HP Ex. 5).

12. On April 23, 2003 the Hearing Chairperson issued a Notice of Hearing setting this matter for hearing on June 3, 4, 5, 2003 at 9:00 a.m. at Special School District Central Offices, 12110 Clayton Road, St. Louis, Missouri 63131. (HP Ex. 5). The Notice scheduled a pre-hearing telephone conference for May 29, 2003 at 9:30 a.m. The Notice was received by the Parents.

13. On or about May 12, 2003, Counsel for the District requested that the time lines for the decision be extended through June 20, 2003. (HP Ex. 8). On May 12, 2003 the Hearing Chairperson extended the time lines in the case to and through June 20, 2003. (HP Ex. 9).

14. Prior to Hearing, the Parents provided a list of witnesses and copies of their exhibits as required by 34 C.F.R. §300.508 and the Missouri State Plan.

15. Prior to Hearing, the District provided the Hearing Chairperson and Panel Members with a list of witnesses and copies of its exhibits as required by 34 C.F.R. §300.508 and the Missouri State Plan.

16. On June 3, 2003 the Due Process Hearing was convened at 9:30 a.m. at Special School District Central Offices, 12110 Clayton Road, St. Louis, Missouri 63131. Present were the Hearing Chairperson and Hearing Panel Members; the Parents and their witnesses; Counsel for the District, Administrators and witnesses for the District, the hearing of evidence continued on June 4, 5, 26 and 27, 2003

17. During the Hearing exhibits were introduced by Parents and District and received into evidence as recorded in the Hearing transcript. Hearing Panel Exhibits 1 through 12 were admitted and made a part of the record in this case.

18. The Parent stated a proposed remedy in the Request for Due Process of enrollment at Judevine Center for Autism.

19. Respondent Special School District made a Motion to Dismiss Complaint, In Part, at the opening of the Hearing asserting a two-year statute of limitations, which was granted.

20. Student was first identified as a child with a disability in 1991, using Early Childhood Special Education criteria. A reevaluation at the time the Student became of school age determined that Student did not meet eligibility criteria to be identified as a child with a disability when he entered school in Rockwood.

21. At the end of his sixth grade school year at Rockwood South Middle School Student was referred for a special education evaluation on June 1, 1999. A special education evaluation was completed on September 22, 1999 at the beginning of Student's seventh grade year. A Diagnostic Conference was held on that date. Based on the September 22, 1999 assessments the diagnostic team determined that Student met the criteria established by the State of Missouri for the education disability of Autism. Parents did not dispute the Autism diagnosis in 1999 or thereafter.

22. Subsequent to September 22, 1999, SSD and Rockwood developed and implemented individualized education programs (IEPs") for Student. On or about October 6, 1999 after he was identified, evaluated and diagnosed, Student's IEP team developed an IEP for Student, which called for placement at Crestview Middle School in Rockwood, in a self-contained classroom specifically designed for children with Autism. The 1999 IEP included goals to address speaking style, work completion, pragmatic language, communications with peers and adults, written expression, and improving home and school behaviors with a positive support plan. During the 1999-2000 school year, Student's IEP team met five more times on December 14, 1999; January 19, 2000; February 25, 2000; March 7, 2000; and Mary 24, 2000.

During this period, Student's placement was changed back to his home school, Rockwood South Middle School, through the IEP process.

23. Student's IEP team reconvened at the beginning of the 2000-2001 school year on August 18, 2000. Student attended the August 18, 2000 IEP meeting and indicated he wanted to be either a Master Lego Builder or a fighter pilot. The resulting IEP called for 1780 minutes per week ("mpw") of special education, 100 mpw of speech/language, 20 mpw direct and 10 mpw indirect occupational therapy, and 420 mpw general education. Parents did not dispute the August 18, 2000 IEP at the Due Process Hearing.

24. Student's IEP team met on six occasions between October 2000 and May 2001 concluding in an IEP dated May 25, 2001. A variety of interventions were attempted during this time including a shortened day and homebound services.

25. As of May 25, 2001, Student's IEP team agreed that a reduction in the total amount of time that Student attended school was appropriate. This IEP called for 1544 mpw of special education, 105 mpw of speech/language therapy, 20 mpw of occupational therapy and 240 mpw of homebound instruction. The placement contemplated by this IEP was a self-contained classroom in a general education setting with side by side science and four hours per week of home bound instruction. The IEP indicated that Student was more anxious, was refusing to comply, became agitated more easily, exhibited separation anxiety and was cycling anxiety and depression.

26. At the time the May 25, 2001 IEP was written, Parents did not request a due process hearing. However, at this Hearing they asked this Hearing Panel to review the adequacy of the May 25, 2001 IEP, which was within two years of their request for Due Process.

27. Student's IEP team met again on June 5, 2001, to develop a transition IEP for the 2001-2002 school year. Certain services that Student was to receive during the summer 2001 that were intended to assist Student in his transfer to the high school setting were not provided at that time.

28. Before the beginning of the 2001-2002 school year Parents informed SSD that Student was medically unable to attend school in a school setting. Student's IEP team reconvened on September 6, 2001 to consider the medical information provided by the Parents and developed an IEP under which Student would receive services in the home setting.

29. During 2001-2002 Student did not attend at a regular high school site, SSD provided homebound services and made available compensatory services, designed to meet Student's then present needs, to compensate for the services that were missed during the summer 2001. Such education and services were provided in accordance with Student's IEP and placement. Student received the compensatory services until Parents decided to terminate such services.

30. Parents contend that not all of the adaptations and modifications found in Student's then current IEP were implemented by the "homebound teachers" during 2001 – 2002.

31. In fall 2002 Parents informed SSD that Student would be attending Lutheran South High School for the 2002-03 school year. At some date thereafter, Parents determined that Student would not attend Lutheran South High School and instead, Student continued to receive services in the home setting, pursuant to a new doctor's order.

32. Student continued with homebound instruction pursuant to a new medical order for the fall 2002 semester. Student received better than passing grades for all subjects taken

during the 2002 semester. Student's grades were assigned by regular Rockwood staff who reviewed the work completed by Student.

33. Homebound services were delayed at the beginning of the 2002-03 school year in part due to confusion about Student's attendance at Lutheran South High School. Ms. Kelly Vosiey, one of the homebound teachers, testified that she was told by SSD to provide compensatory services to make up for the late start.

34. Student's most recent medical order for homebound instruction expired in December 2002 and at that time Parents terminated the homebound services provided by SSD and enrolled Student in an "evaluation program" the Judevine Center for Autism ("Judevine").

35. Student received passing grades in the classes that he had completed up to the point that Parents terminated the homebound services in December 2002. Student was making progress on the general education curriculum.

36. At the time of the Hearing, Student was taking classes through Judevine by correspondence through the University of Missouri High School Program.

37. Judevine is not accredited to, and does not have authority to, issue a high school diploma; however, Judevine is authorized by the State of Missouri to provide educational services to children with autism, if it enters into a contract with a public school district to do so. At this time Judevine does not have a contract with Rockwood or SSD with respect to Student.

38. Student also receives treatment through the Judevine.

39. SSD reconvened Student's IEP team in February 2003; this IEP meeting was continued to March 2003 and lasted for more than 10 hours total. At that time, Mother informed the IEP team that Parents had enrolled Student at Judevine for an intensive evaluation.

Enrollment of Student at Judevine was done outside of the IEP process and without first seeking the approval of Student's IEP team and the SSD.

40. The intensive evaluation period at Judevine began in January 2003. There was testimony at the Hearing that at the end of March 2003 after a telephone call from Mother, Student's status at Judevine changed from being engaged in an intensive evaluation to being enrolled in Judevine's new Asperger's program in a class with two other students with autism between the ages of 11 and 17.

41. Testimony was offered from Student's language therapist, his classroom teacher and from two assistant directors from Judevine. Based on such testimony, the Hearing Panel is unable to discern a difference between the services provided by Judevine to Student during the intensive evaluation that began in January 2003 and the services provided by Judevine to Student after he was formally enrolled in the Asperger's program at the end of March 2003.

42. After the two lengthy IEP meetings held for Student in February and March 2003 SSD prepared an IEP for Student and recommended a placement for Student at Southview School, a special school operated by SSD. Some of Judevine's personnel and Mr. Joe Lenac, Jr., Student's psychologist, were present at the February and March 2003 IEP meetings.

43. The program envisioned to be offered by the District was to be Student specific. Student would not immediately transfer into an existing program, although SSD has a program at Southview for students with Asperger's.

44. Judevine's personnel testified that the goals and objectives in the March 2003 IEP were appropriate for Student. Judevine personnel testified on behalf of Parents and were called by SSD. Judevine personnel further testified that SSD has personnel, who have considerable

expertise in the area of autism. Judevine personnel testified that Mother was given opportunities to present her views during the IEP meeting.

45. SSD proposed having Student's homebound teachers, with whom he was familiar, continue to work with him during the transition period from homebound to a school-based program. SSD indicated that it would provide the homebound teachers with additional training in working with students with autism.

46. SSD has or can make available a wide variety of services at Southview including occupational therapy, speech/language therapy, music therapy, a teacher assistant, and an Autism Spectrum Disorder ("ASD") Facilitator who provides expert advice to teachers at Southview. In addition to the ASD Facilitator, Southview had available a Behavior Facilitator and a Positive Behavior Support Facilitator. Southview has a program designed to enhance positive behavior throughout its building.

47. The March 2003 IEP could be implemented at Southview, which although it is a special school, is a public school and is a less restrictive environment than is Judevine, which is a private institution and not a school.

48. Parents rejected the suggested Southview placement for Student although they did not dispute the appropriateness of any of the elements of the March 2003 IEP.

49. Parents wanted Student placed at Judevine. They offered no evidence as to the cost of services provided by Judevine from January 2003 to the date of Hearing or thereafter.

50. The Hearing was held over five days. Parents proceeded pro se, without an attorney. Over objection from counsel for SSD Parents were permitted to be accompanied by and advised by Julie Roscoe from the Judevine Center for Autism, who assisted them in

presenting their case and who testified at the Hearing. Parents received a full fair opportunity to present their case.

A. Time Line Information

51. On or about March 20, 2003, the Parents sent a letter to DESE requesting a due process hearing. The request for the due process hearing was received by DESE on March 20, 2003. Accordingly, the due process hearing had to be held, and a written decision rendered by May 5, 2003. This date initially was extended due to the unavailability of Ms.

Sue Dame and the appointment of Ms. Janice Duncan as a substitute Hearing Panel Member. A Notice of Hearing was issued by the Chair of the Hearing Panel on April 23, 2003 extending the Hearing time line from May 5, 2003 to June 16, 2003 at the request of the School District.

52. On or about May 12, 2003 Counsel for the District requested that the time lines for

the decision be extended to June 20, 2003. On June 5, 2003 at the conclusion of Parents' evidence

the time line was extended at the joint request of the parties to July 24, 2003 so that additional evidence could be taken on June 26 and 27, 2003 and that post-Hearing Findings of Fact, Conclusions of Law could be filed by the parties.

53. On July 24, 2003 at the request of the School District the Hearing Chairperson again

extended the time lines in this case to and through August 7, 2003 at the request of the School District because the proposed post Hearing pleading of the School District sent to Panel Member Rand Hodgson was misdirected in the mail.

B. The Issues And Relief Requested

54. Parents requested due process on March 20, 2003 and in their Complaint and

Request for Due Process, Parents allege:

1. The Districts have denied and continue to deny a free appropriate public education (FAPE) and have violated and continue to violate Student's and Parents' procedural and substantive rights in numerous ways, including but not limited to those stated in their complaint.
2. The Districts failed to provide an appropriate least restrictive environment, especially at his home schools of Rockwood South Middle and Rockwood Summit High School, that is predictable, consistent, and nonthreatening that meets Student's unique needs with academics that ensure acceleration and differentiation and where supports are in place to meet his many and varied needs with appropriate services.
3. SSD made a decision to change Student's placement to Southview (a phase III setting), although the majority of the IEP team agreed in February/March 2003 that this was not an appropriate placement and would likely result in physical or emotional harm to him.
4. The District's lack of appropriate educational services has resulted and will continue to result in Student regressing in his educational achievements, lessen his opportunities for a viable transition into a more mainstream school setting, and decrease his likelihood of success in a post-secondary environment. P. Ex. 1.
55. Parents proposed resolution set forth in their Post-Hearing filings is:
 1. A purchase of service contract at Judevine Center for Autism's Asperger's Program that contains all supports and services Student needs until he transitions into a less restrictive environment or receives a college preparatory high-school diploma.
 2. An order for compensatory services to Judevine Center for Autism on Student's behalf for the Districts' failure to provide a free appropriate public education (FAPE) and/or failure to implement Student's IEP.
 3. An order reimbursing the Parents for expenses incurred prior to the hearing or a final judgment in providing appropriate services for the student while residing in the Districts.
 4. An order that the change of placement proposed by SSD to Southview (a Phase III setting) at the March 10, 2003 IEP is not allowed to proceed; and to allow Student to remain at Judevine and continue with his participation in an intense educational evaluation at public expense, due to SSD's failure to provide services and/or support or an appropriate placement opportunity for Student since he was released from Homebound on December 23, 2002.

II. CONCLUSIONS OF LAW

1. This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; the IDEA's implementing regulations, 34 C.F.R. Part 300; Missouri's special education statutes, §§ 162.670-162.999, RSMo.; and the Missouri state regulation implementing its special education statutes, 5 C.S.R. § 70_742.140 ("Individuals With Disabilities Education Act, Part B This rule incorporates by reference changes to the annual program plan required by new federal statutes for the provision of the services to eligible children."). The Missouri regulation is referred to as the State Plan. The IDEA, its regulations and the State Plan for Part B of the Individuals With Disabilities Education Act (2002), ("State Plan") set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District in providing special education and related services to students with disabilities.

2. The Student is a "child with a disability," as that term is defined in the IDEA, its regulations, 34 C.F.R. §300.7 and the State Plan.

3. The District is a Missouri Special School District organized pursuant to Missouri Statutes. Parents and Student are now and have been residents of the District during all times relevant to this due process proceeding, as defined by §162.890 RSMo.; State Plan, Regulation X-D at 118-19.

4. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri, which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as

the District, in providing special education and related services to students with disabilities.

5. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs”; (2) “to ensure that the rights of children with disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.

6. The IDEA requires that a disabled child be provided with access to a “free appropriate public education.” (“FAPE”) Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term “free appropriate public education” is found in the IDEA 20 U.S.C. § 1401(8) and is defined by 34 C.F.R. § 300.8 as follows:

“...the term ‘free appropriate public education’ means special education and related services that--(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include preschool, elementary school, or secondary school education in the State involved; and, (d) Are provided in conformity with an IEP that meets the requirements of §300.340--300.350.” A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”. 34 C.F.R. Part 300.

7. The IDEA requirement to provide a FAPE “is satisfied when the state provides personalized instruction with sufficient support to benefit educationally from that instruction; the requirement of a FAPE does not require the state to maximize each child’s potential commensurate with the opportunity provided to non-disabled children.” Breen v. St. Charles R. [VI] School District, 2 F.Supp.2d. 1214, 1221 (E.D.Mo.1997), aff’d 141 F.3d 1167, 1998 WL 172602 (8th Cir.1998)(unpublished decision); see also, Rowley, 458 U.S. at 200, 102 S.Ct. 3034;

Reese v. Board of Education of Bismarck R-V School District, 225 F.Supp.2d 1149, 1155 (8th Cir. 2002).

8. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; Thompson v. Board of the Special School District No. 1, 144 F.3d 574, 578 (8th Cir. 1998); Fort Zumwalt School District v. Clynes, 119 F.3d 607, 610 (8th Cir. 1997), cert. denied 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed2d 1090 (1998).

9. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. O'Toole by O'Toole v. Olathe District Schools Unified School District No. 233, 144 F.3d 692, 698 (10th Cir. 1998). The IDEA requires the District to provide a child with a disability with a “basic floor of opportunity..., which [is] individually designed to provide educational benefit to the handicapped child.” Rowley, supra., 102 S.Ct. 3034, 3047. The IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” Rowley, supra., 102 S.Ct. 3034, 3049; Gill v. Columbia 93 School District, 217 F.3d 1027, 1034 (8th Cir. 2000); Reese, supra., 225 F. Supp. 2d at 1155, fn. 12; Fort Zumwalt, supra., 119 F.3d 607, 612; and A.W. v. Northwest R-1 School District, 813 F.2d 158, 163-64 (8th Cir. 1987). Similarly, the IDEA does not require a school district to provide a program that will, “achieve outstanding results”, E.S. v. Independent School District No. 196, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, Tucker v. Calloway County Board of Education, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” Fort Zumwalt, supra. 119 F.3d 607, 613; or, that will provide the placement the parents prefer. Blackmon Springfield R XII v. School

District, 198 F. 3d 648, (8th Cir. 1999); ES., supra. 135 F.3d 566, 569. See also: Tucker, supra., 136 F.3d 495, 505; and Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education, 938 F. 2d 712, 716-17 (7th Cir. 1991).

10. A key component of IDEA for delivery of special education is the “individualized education program,” or “IEP.” Honig v. Doe, 484 U.S. 305, 311 (1988). The IEP is developed as a result of collaborations between parents, educators, and representatives of the school district. It “sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.” Id.

11. The February/March 2003 IEP for Student was developed in accordance with the requirements of the IDEA. Parents were given ample opportunity to participate in the development of this IEP together with their consultants and advocates including representatives of Judevine and Student’s psychologist, Mr. Lenac. Blackmon, supra.

12. The March 10, 2003 IEP is reasonably calculated to provide Student with educational benefit and would provide Student with personalized instruction with sufficient support to allow Student to benefit educationally from that instruction. Breen v. St. Charles R. [VI] School District, supra. This IEP was developed after substantial input from Parents, their advocates and advisors, such that there was no denial of procedural due process. It is based on the considered judgments of the District’s education professionals.

13. The other IEPs that were developed within the two years prior to Parents’ Request for Due Process on March 20, 2003 similarly, were formulated with input from Parents, are based on the judgments of education professionals and are also reasonably calculated to provide FAPE to Student.

14. In addition to the requirement for FAPE found in the IDEA, there is also a “strong Congressional preference” for educating students in the least restrictive environment. Carl D. v. Special School District of St. Louis County, Mo., 21 F.Supp.2d 1042, 1058 (E.D. Mo. 1998) (“IDEA evidences a strong congressional preference for mainstreaming”).

15. Educating students in the public school is presumed to be preferable to educating students in private schools. Blackmon, supra. at 661.(“statutory language gave rise to a presumption in favor of the defendant’s placement in the public schools”).

16. Southview School is the least restrictive environment for Student and is the preferred placement for Student under the IDEA. Blackmon, supra.

III. DECISION

It is the decision of this Hearing Panel that judgment be issued in favor of Special School District and against Student/Parents on the issue of whether the School District offered an IEP in March 2003 that was reasonably calculated to provide FAPE to Student and complied with the requirements of the IDEA and the State Plan. However, because the Parents rejected this IEP and the placement that was offered with the IEP, the expiration of the medical order for homebound instruction and the length of time that has passed, the Hearing Panel concludes that it is necessary for the District to hold a new IEP meeting within 30 days of the date of this Decision in order to update the student’s present level of performance, to review and expand the current behavioral intervention plan including highly structured/detailed positive behavior supports; to schedule a functional behavioral assessment of the antecedents or triggers of behaviors that is data driven to be completed within the first ninety (90) days of school; to prepare a comprehensive transition plan for transition from home bound and instruction at Judevine; to prepare a transition plan for graduation or acquisition of sufficient credits for high

school graduation; to prepare a plan or timetable for transition into a less restrictive environment; to prepare a plan for handling sensory issues with Student including a plan for handling crisis that may arise.

It is further the decision of this Hearing Panel that although the IEPs offered and implemented by the District during the two years prior to the request for Due Process on March 20, 2003 were sufficient to provide FAPE to Student. However, no services were provided by the District after December 31, 2002. Therefore, the Hearing Panel finds that Student is entitled to 120 minutes per week of compensatory services in academic/functional areas to be decided by the IEP team for a period of one year. Such services should include 60 minutes of language and 60 minutes of academics per week, which must be accessed by Student between September 1, 2003 and August 29, 2004.

The entire Hearing Panel joins in this Decision without dissent.

IV. ORDER

Parents' Request for Due Process is dismissed and an Order is entered consistent with the Findings of Fact, Conclusions of Law and Decision set forth above.

V. APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, §536.0 10 et seq. RSMo. Specifically, §536.110 RSMo. provides in pertinent part as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision....

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State

Court pursuant to the IDEA. See 34 C.F.R. §300.512.

Dated: August ____, 2003

Margaret M. Mooney, Hearing Chair

Janice Duncan, Panel Member

Rand Hodgson, Panel Member

Copies of this Decision will be mailed to the Parents and Counsel for the Special School District of St. Louis County on this date by certified mail return receipt requested and sent by facsimile to same.